IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.60 OF 2006
IN
WRIT PETITION NO.2242 OF 2001

Maker Tower 'H' Co-op.Hsg.Soc.Ltd.
and Anr. ..Petitioners

Vs.

Smt.Leena N.Parekh and Ors. ..Respondents

And

Chandrakant V.Shah ..Applicant

Mr.Ramesh Dhanuka i/b Ms.Anita Dhanuka for the petitioners

Mr.G.W.Mattos, A.G.P. for Show Cause Noticee

Mr.Milind More, A.G.P. for respondent nos.5 and 6

Mr.N.R.Parikh, repsondent no.4 in person

Mr.Pankaj Vijayan for respondent no.3

Mr.Shyam Mehta i/b Mr.Ajay Khandhar for the applicant

CORAM : S.U.KAMDAR, J
DATED : 21ST APRIL, 2006

ORAL JUDGMENT:

1. The present petition challenges the order dt.22.7.99 passed by the Deputy Registrar

Co-op.Societies and order dt.19.6.01 passed by the Divisional Joint Registrar Co-op.Societies being Ex.'D' and 'F' to the petition. By the said order, the Deputy Registrar has held that the respondent no.1 is entitled to be a deemed member of the petitioner society. Some of the material facts of the present case are briefly enumerated as under:

2. The respondent no.4 was an original owner of flat bearing no.H-21 in the petitioner society being Maker Tower Co-op.Housing Society Ltd situated at Cuffe Parade, Mumbai.The respondent no.4 is a holder of the said flat and was also a member of the petitioner society and was holding 5 shares bearing no.26 to 30. The said shares were originally held in the name of three brothers, Shri Nitin M.Parekh, Shri K.M,Parekh, and Shri M.M.Parekh. Sometime in or about 1994, Shri K.M.Parekh and Shri M.M.Parekh resigned from the said membership and thus Shri Nitin M.Parekh remained as a sole owner of the said shares in the said property. On 14.8.94 respondent no.4 made an application to add the name of Ms.Leena M.Parekh also as an associate member of the society. On

1.6.96, the respondent no.4 made an application to the society interalia requesting therein to add the names of his children, Master Vishal Parekh and Master Niral Parekh and also simultaneously requested to delete the name of his wife Ms.Leena M.Parekh from the said share certificate. The said application did not accompany the share certificate to the society and thus it is the case of the petitioner society that the said application was not complete in all respects. By another letter dt.15.10.96 the respondent no.4 requested that the said flat should be transferred in the name of his two children because he has gifted the same to them. He also forwarded the share certificate alongwith the same for the purpose of carrying out correction and requested for an issuance of a fresh certificate. On 25.10.96 the society addressed a letter to the respondent no.4 interalia pointing out to respondent no.4 that they have received a letter from the Deputy Registrar Co-op.Soc, Bombay interalia stating therein that the said flat and the bank accounts are attached in the proceeding initiated by Vinkar Sahakari Bank Ltd. and therefore the society should take cognisance of the

said attachment and should not permit the transfer of the said property. By the said letter dt.25.10.96 the petitioner society informed the respondent no.4 that in view of the restrain order they are unable to transfer the said share certificate until they receive the clearance in that behalf. The said attachment order levied on 1.8.96 was lifted and the society was informed about the same on 3.11.97. However, before that, on 25.6.97, the respondent no.1 addressed a letter to the society that inspite of the fact that the application was made for transfer of the flat as far back as 1.6.96 still no cognisance has been taken and contended that the attachment order should not be considered for the purpose of the transfer of the said flat. The said attachment order was ultimately lifted on 3.11.97.

3. In the meantime, a suit came to be filed being suit no.1320 of 1995 in the High Court of Bombay against respondent no.4 seeking recovery of about Rs.2.25 crores. In the said suit, on 31.8.98 this court passed an ad interim restrain order restraining the respondent no.4 from in any manner

dealing with, transferring, alienating, the right, title and interest in respect of the said flat. The said order was ultimately confirmed on 19.7.99 by this court. In the meantime, the respondent no.4 entered into an agreement on 17.8.98 purportedly for the sale of the said flat in favour of one Chandrakant V.Shah and it is the case of the said Chandrakant V.Shah that under the said agreement he has paid large amount of money to respondent no.4.

4. Ultimately, the said Chandrakant V.Shah filed a suit in this court being suit no.288 of 2002. The said Chandrakant V.Shah also took out a Notice of Motion bearing no.876 of 1999 in a suit preferred by one Premlal R.Desai and Anr. The said Notice of Motion came up for hearing alongwith Notice of Motion no.2783 of 1998 and by an order and Judgment dt.19.7.99 a common order was passed by this court interalia restraining the respondent no.4 from disposing of the said flat. An appeal was preferred against the said order and the said appeal was dismissed by an order dt.22.9.99. This alleged purchaser of the property has taken out a

Chamber Summons in the present writ petition for being impleaded as a party respondent. This applicant has also independently challenged the order impugned herein i.e. an order of the Divisional Joint Registrar by filing revision under section 154 of the Maharashtra Co-op.Societies Act, 1960 before the Hon'ble Minister. The Hon'ble Minister has by an order and Judgment dt.7.3.06 dismissed the said revision application and upheld the order passed by the Divisional Joint Registrar in favour of the respondent no.4.

5. Sometime in or about July 1997 the respondent no.4 moved an application under section 23 of the Maharashtra Co-op.Societies Act, 1960 contending that by virtue of non-rejection of application of respondent no.4 to transfer the share certificate in favour of respondent no.2 and 3, respondent no.2 and 3 have become deemed members under the provision of s.23 (2A) of the Maharashtra Co-op.Societies Act and thus, the Society should be directed to carry out necessary consequential amendment in the share certificate and recognise respondent no.2 and 3 as members of the said

society. Sometime, in or about June 1999 the petitioner addressed a letter to respondent no.5 and pointed out that on 31.8.98 there was an injunction order passed by this court restraining respondent no.4 from transferring the said flat in favour of any other person. The society also pointed out that infact the application of the respondent no.4 to make respondent no.2 and 3 as members was rejected as far back as on 25.10.96 and therefore, there is no question of deemed membership in favour of the applicant in the present case. However, by an order and judgment dt.22.7.99 the respondent no.5 granted the membership to the respondent no.2 and 3 by purportedly holding that the Society did not make clear what is the ad interim order passed in suit no.1320 of 1998 and further held that the society can obtain indemnity bond and affidavit that if there is any action initiated against the society then the respondent nos.2 and 3 will be liable for the same and not the society.

6. On the aforesaid basis, the said impugned order was passed granting membership to the

respondent nos.2 and 3 on the application of respondent no.4. Being aggrieved by the said order, the petitioner society filed an appeal before the Divisional Joint Registrar. The Divisional Joint Registrar by an order and Judgment dt.19.6.01 dismissed the revision application preferred by the society against the order of the learned Deputy Registrar dt.22.7.99. While dismissing the said revision the learned Divisional Joint Registrar has ignored the orders passed by this court and held that even before the orders passed by this court there was a deemed membership of the respondent no.2 and 3 and therefore society is bound to transfer the flat in favour of respondent nos.2 and 3. It was further held that the Society did not appear before the Divisional Joint Registrar and that there was a delay in filing revisional application of about 7/8 months.

7. On the aforesaid basis and on the ground that the application is of 1996 and an attachment order being vacated on 31.8.98 a period of 2 months commenced from 31.8.98 and thus at the expiry of 2 months, the application of respondent no.2 and 3

should be treated as being granted by virtue of deeming provisions and therefore they are entitled to membership.

8. It is this order of the Deputy Registrar which is challenged before me in the present writ petition. During the pendency of the writ petition, the applicants who are claiming to be the purchasers of the said flat preferred a revision application to the Minister against the order of the Divisional Joint Registrar and during the pendency of the writ petition the Minister has rejected the said revision application.

9. At the hearing of the writ petition the applicants have moved the Chamber Summons as well as a separate writ petition challenging the orders by the Minister. In my opinion, the right of the applicant has to be governed by the suit filed by him for the purpose of specific performance of a so-called agreement in his favour. In the dispute between the Co-op.Society and the member that whether his sons are deemed members or not, by virtue of a gift deed, the applicants are neither

necessary nor proper party. The dispute is essentially between a member of the society or a person claiming to be a member of the society on one hand and the society on the other hand. The dispute is not in any way related to the applicant who are claiming independent rights under agreement for sale. It is always open for the applicant to apply for all necessary orders in the suit filed by him and if he establishes his right then he will be entitled to necessary reliefs. It is not open for the applicant having failed in the effort to obtain injunction order in his own suit to achieve the same result by intervening in the present writ petition and seeking to become member and insist that the transfer of membership should not be granted in favour of respondent no.2 and 3 from respondent no.4. In that light of the matter, Chamber Summons initiated by the applicant is required to be dismissed. Accordingly, the Chamber Summons is dismissed.

10. The learned counsel for the petitioners has contended that the orders passed by the authorities are not sustainable in law. It has been contended

that the application was already rejected on 25.10.96 and therefore there was no question of deeming provision being applied to the case of respondent no.4 and thus, the respondent no.4 is not entitled to grant of any membership on that basis. The learned counsel for the petitioners has further submitted that in fact the Deputy Registrar did not give an opportunity at all to the petitioner for representing their case and the matter was heard ex-parte. It has been further submitted that even the Divisional Joint Registrar did not deal with the contention of the petitioner society. The learned counsel for the petitioners further submitted that infact when the impugned orders were passed by the respondent nos.5 and 6 there was already a restrain order issued by this court and therefore the orders passed by the Registrars are illegal and unsustainable in law.

11. On the other hand, the respondent no.4 who is appearing in person as he is a qualified advocate has submitted that even if the date of application is taken as 15.10.96 still the attachment order being vacated on 3.11.97, the

period of 60 days commenced on the expiry of 60 days from the said date i.e. 3.11.97. He submitted that thus, respondent no.4 was entitled to grant of membership for respondent nos.2 and 3 on the expiry of the said period as deemed members. Therefore, the respondent nos.5 and 6 have rightly recognised them as deemed members of the society. It has been submitted that the orders of the High Court for an injunction was passed against them subsequently i.e. first ad interim order was passed only on 31.8.98 but by that time two months' having expired the respondent no.4's application ought to have been granted and the respondent nos.2 and 3 ought to have been declared as deemed members.

12. The learned counsel for respondent no.4 has therefore submitted that the orders passed by the Deputy Registrar are legal and valid and calls for no interference by this court in writ jurisdiction under Article 226 of the Constitution of India.

13. Now turning to the merits of the case, I am of the opinion that the orders passed by the Deputy

Registrar and Divisional Joint Registrar are unsustainable in law. First and foremost basic principle which is ignored by the Deputy Registrar and Divisional Joint Registrar is the fact that when the matters were heard in 1997 and 1999 by the Registrars there were already interim orders passed by this court restraining respondent no.4 from transferring alienating, encumbering or creating third party rights in respect of the said flat. I am of the opinion that the Deputy Registrar and Divisional Joint Registrar both being authorities subject to the Jurisdiction of this court are not entitled to ignore the orders passed by this court in any proceeding whatsoever. The Deputy Registrar and Divisional Joint Registrar are bound by the operative orders passed by this court and by no stretch of imagination, it can be ignored. I am also of the opinion that the Deputy Registrar and Divisional Joint Registrar have erred in law by ignoring the orders holding that the necessary indemnity can be obtained from respondent no.4. In my opinion, once there in an interim order injuncting the respondent no.4 from in any manner alienating, encumbering, transferring and / or

creating any third party right in respect of the said flat and when the said order has been brought to the notice and attention of the authorities, they are bound to follow the same and cannot ignore the same as has been done by the respondent no.5 and 6 while passing the impugned orders.

14. Turning to the main issue whether respondent no.4 was entitled to any deemed membership, I am of the opinion that even in respect thereof, the respondents case must fail because admittedly the first time application for membership was made on 1.6.96 but the same did not contain any prescribed form nor the share certificate was forwarded by the respondent no.4 to the petitioner society. The application in the prescribed form was for the first time made only on 15.10.96 and by that time on 1.8.96 there was already an attachment order passed in favour of bank namely Vinkar Sahakar Bank Ltd. and communicated to the petitioner society. In my opinion, in the aforesaid light on 25.10.96 the society rightly rejected the said application of the respondent no.4 for transfer of membership in

the light of the attachment order which was in operation at that point of time. Once the application is rejected then in my opinion the said application stands rejected for all the purposes. Period of 60 days prescribed u.s.23 of the Maharashtra Co-op.Societies Act does not continue to run even after the rejection of application on 25.10.96. It is because if the application is rejected then there is a separate provision under s.23 (2) of the Act of filing an appeal and not an application for directions for deemed membership under s.23(1A) of the said Act. The provision of s.23 of Maharashtra Co-op.Societies Act, 1960 reads as under:

> "Open membership - (1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefore under the provisions of this Act and its bye-laws.
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> (1A) Where a society refuses to accept the application from an eligible person for admission as a member, or the payment made by him in respect of membership, such person may tender an application in such form as may be prescribed together with payment in respect of membership, if any, to the Registrar, who shall forward the application and the amount, if any so paid, to the society concerned within thirty days

from the date of receipt of such application and the amount; and thereupon if the society fails to communicate any decision to the applicant within sixty days from the date of receipt of such application and the amount by the society, the applicant shall be deemed to have become a member of such society) (if any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties)

(2) Any person aggrieved by the decision of a society, refusing him admission to its membership, may appeal to the Registrar (Every such appeal, as far as possible, be disposed of by the Registrar within a period of three months from the date of its receipt:

Provided that, where such appeal is not so disposed of within the said period of three months, the Registrar shall record the reasons for the delay).

(3) The decision of the Registrar in appeal, shall be final and the Registrar shall communicate his decision to the parties within fifteen days from the date thereof.

(4)Without prejudice to the foregoing provisions of this section, in the case of agro-processing or any other society for which a definite zone or an area of operation is allotted by the State Government or the Registrar, it shall be obligatory on the part of such society to admit, on an application made to it, every eligible person from that zone or the area of operation, as the case may be, as a member of such society, unless such person is already registered as a member of any other such society, into the same zone or the area of operation).

15. A plain reading of provisions of s.23 indicates that the period of 60 days commences from the application made by the member for a transfer of flat and said application should be complete in all its respects. It also contemplates that if application is rejected, an appeal has to be filed before the authority and if the application is not rejected and the person seeks to apply for deemed membership then he has to apply for a direction to the society by the Registrar that he should be treated as a member of the said society.

16. In the present case, the application complete in all respects has been filed on 15.10.96 and is rejected on 25.10.96. In my opinion, once the application is rejected then the question of deemed membership on expiry of period of 60 days cannot arise. The authorities below have proceeded on the wrong footing that the deemed membership period started in the present case from the date an attachment is lifted and before the ad interim order was granted by the High Court a period of 60

days having expired the respondent nos.2 and 3 have become deemed member. The said finding of the authorities is contrary to the plain reading of s.23 and therefore must be set aside. The said findings are unsustainable in law. Once the application is rejected on 24.11.96 the question of any deemed membership cannot and does not arise. It was open for the respondent no.4 to make a fresh application after the attachment order was lifted but his earlier application cannot be treated as pending inspite of rejection by a letter dt.25.10.96 by the society due to an attachment order passed in favour of Vinkar Sahakari Bank Ltd. Thus, the finding of the authorities below that the period of 2 months commences from the date of attachment being lifted and that on expiry of 60 days which is prior to the ad-interim order passed by this court respondent no.2 and 3 have become deemed member is unsustainable in law and therefore, the same is liable to be rejected.

17. Now turning to the next aspect of the matter that the authorities namely respondent no.5 and 6 being quasi-judicial authorities and subject

to the superintending Jurisdiction of this court were not entitled in law to ignore the orders passed by this court in pending suits in favour of the various parties. The orders of the High Court are not ineffective and have to be carried out by everyone who are subordinate to the High Court and ought to give effect to while passing the orders under a statue. In my opinion, it is not open to the authorities to ignore the orders of the High Court on the ground that they are passed after the period of 60 days having expired from the date of the lifting the attachment and therefore deemed membership should be granted to the respondent nos.2 and 3. The authorities are bound to take into consideration the orders passed by the High court on the date of passing of the orders by them and they ought to have refused the application of respondent nos.2, 3 and 4 in the light of the interim order of injunction granted by this court restraining respondent no.4 from alienating, encumbering or transferring or or creating any third party rights in respect of the said flat. In my opinion the impugned orders passed by the authorities are contrary to the aforesaid canon of

law and thus, the same are required to be quashed and set aside.

18. On both the aforesaid grounds, I am of the view that the orders passed by the authorities below are unsustainable in law and are required to be quashed and set aside and accordingly I allow the present writ petition and quash and set aside and said orders being dated 22.7.99 and 19.6.01. Petition is accordingly made absolute in terms of prayer clause (a). Writ Petition and Chamber Summons both are disposed of accordingly. However, there shall be no order as to costs.